

*Don't apply to
the amount reported,
has just been decided
1. not to be decided*

STATE OF CALIFORNIA
BOARD OF EQUALIZATION
BUSINESS TAXES APPEALS REVIEW SECTION

In the Matter of the Petition)
for Redetermination Under the) DECISION AND RECOMMENDATION
Hazardous Substances Tax Law of:)
)
) No.
)
)
)
Petitioner)

The Appeals conference in the above-referenced matter was held by Staff Counsel Michele F. Hicks on _____ in Oakland, California.

Appearing for Petitioner:

Appearing for the Department
of Toxic Substances Control
(DTSC):

No appearance

Appearing for the Environmental
Fees Division of the Board (EFD):

Mr. Jeffrey R. George
Supervising Tax Auditor

Protested Item

The liability is:

Hazardous Waste Generator Fee
for the period January 1, 1989
to December 31, 1989 based on 56.7
tons of hazardous waste generated.

\$.

Less amount reported and paid

\$

Total deficiency

\$

Petitioner's Contention

Petitioner contends that the fee category should be based on the hazardous waste generated net of the recycled amount.

Summary

Petitioner is a corporation which is engaged in the manufacture and sale of paints. Petitioner accumulates sludge and tank washings and ships them on hazardous waste manifests to a recycler. The recycler heats the sludge to force the solvents out of it and returns the solvents to petitioner for use in petitioner's manufacturing process.

During calendar year 1989, petitioner shipped 56.7 tons of material on hazardous waste manifests. Based on this, EFD determined that petitioner generated hazardous wastes in category 4 (50 tons to less than 250 tons) and owed a generator fee of \$. Petitioner reported and paid \$, the generator fee for category 3 (25 tons to less than 50 tons). Petitioner subsequently contends that it only generated 22.4 tons of hazardous waste and the fee for 1989 should only be \$ (category 2: 5 tons to less than 25 tons).

Petitioner contends that it should only have to pay a fee for the total shipped less the total recycled amount. Petitioner contends that only the amount of hazardous waste which was not recycled should be used in determining the fee category. Petitioner does not dispute the amount of hazardous waste on the manifests. EFD takes the position that only hazardous waste which is recycled on the site of the generator should not be considered in determining the fee category.

Petitioner argues that limiting the deduction of hazardous waste to generators who recycle on their own site is discriminatory against the small businesses which cannot afford to purchase equipment for recycling. Petitioner contends that EFD should look to the net amount of hazardous waste generated regardless of who performs the recycling. To do otherwise would be contrary to the intent of the Legislature which is to encourage recycling.

Analysis & Conclusions

Section 25205.5 of the Health and Safety Code imposes a fee on generators of hazardous waste. The amount of the fee is based on ranges of weights of hazardous waste generated. Generators of hazardous waste typically ship the hazardous waste which they generate on hazardous waste manifests to locations where the hazardous waste is treated or disposed of. EFD utilizes the hazardous waste manifests to verify that the fee reported is correct.

Subdivision (e) of the statute provides, "Any hazardous materials which are recycled, and used onsite, and are not transferred offsite, are not hazardous wastes for purposes of this section." (Emphasis added.)

Under subdivision (e), material which is to be regarded as not being hazardous waste must not only be recycled and used onsite, but must also not be transferred offsite. The material in question was transferred offsite on hazardous waste manifests. Therefore, the exclusion of subdivision (e) does not apply to petitioner.

Petitioner contends that placing petitioner in the higher fee category is discriminatory and contrary to legislative intent. Our review is limited to applying the statute to the facts of the case. The statute is clear as to the application of the fee. Petitioner previously petitioned this issue for the calendar year 1988 (Account No.). The Board held that under the statute, the exemption for recycling applies only to onsite recycling. Therefore, petitioner did not qualify for the section 25205.5(e) exemption.

Recommendation

We recommend that the petition be denied.

Michele F. Hicks
MICHELE F. HICKS, STAFF COUNSEL

DATE

JA